

## Uniform Environmental Covenants Act

### Background:

The Uniform Environmental Covenants Act (UECA), allows for the long-term enforcement of clean-up controls (restrictions on certain uses, prohibitions on using wells, protection of concrete “caps”, maintenance of monitoring equipment, etc.) to be contained in a statutorily-defined, voluntary agreement known as an “environmental covenant” which will be binding on subsequent purchasers and tenants of the property and be listed in the local land records.

The act will remove various legal impediments to the use of such controls and thereby lessen liability concerns of sellers and lenders associated with the redevelopment and sale of “brownfields” sites. Federal or state regulatory approval of the underlying cleanup plan will still be required, as will notice to appropriate parties, including local governments and other parties in interest. UECA helps fulfill the dual purposes of activity and use restrictions – the protection of human health and the economically viable reuse of the property in question, while also providing the legal infrastructure for needed for creating, modifying, and recording environmental covenants.

### Key points about the Uniform Environmental Covenants Act:

- UECA will help ensure that land use controls needed in connection with an environmental cleanup will be reliable and enforceable for as long as they are needed to protect people living and working on or near these sites.
  - **Property owners** should want the option of environmental covenants because reliable long term controls reduce the risk that a future owner might (accidentally or deliberately) eliminate the controls and thereby increase or revive the first owner’s environmental liability.
  - **Lenders and local governments** should want the option of environmental covenants because these tools will allow for the redevelopment, sale, and productive use of remediated property (thereby increasing the underlying value of the real estate).
  - **Environmental regulators and environmentalists** should want the option of environmental covenants because they provide a mechanism for the long-term stewardship of remediated properties and help ensure that agreed-upon use restrictions remain in place as long as needed to protect human health and surrounding property.
  - **Neighbors and potential purchasers** should want the option of environmental covenants because they are given clear notice of what activities and uses are appropriate for the property and what sorts of controls need to be maintained in the future.
- UECA helps to return previously contaminated property to the stream of commerce, by allowing the owners of that property to engage in responsible risk-based cleanups and then transfer or sell the property subject to approved controls on its use.
- UECA does NOT say what clean-up standards need to be met or whether liability for a cleanup should be shifted or capped. These standards are determined by other applicable state or federal law.

- UECA does NOT force any existing property owner to agree to long-term use controls on his or her property – these agreements are VOLUNTARY. A subsequent purchaser of a property would buy subject to these controls, but would do so with actual knowledge of the restrictions as recorded in the land records.
- UECA gives a broad array of interested parties the ability to enforce the use and activity restrictions contained in an environmental covenant, thereby helping to ensure those controls will remain in place and prevent unintended harm.
- UECA requires a state or federal environmental agency to be a signatory to the covenant, thereby ensuring that risk assessments and control mechanisms are based on sound science, will adequately protect human health and surrounding properties, and that notice of the covenant is provided to affected third parties.
- UECA protects valid environmental covenants from being inadvertently extinguished by application of various common law doctrines, adverse possession, tax lien foreclosures, less-restrictive zoning changes, and marketable title statutes.

The Uniform Environmental Covenants Act is an important tool in revitalizing inner cities and other areas where vacant and underused properties are preventing vital redevelopment or other productive use of the land. It was drafted with the participation of state and federal regulators, public and private land owners, banking interests, environmentalists, and land use experts. Its uniform national enactment will provide the owners of contaminated land with greater confidence to invest in long-term remediation strategies and use controls, while at the same time protecting human health and allowing those properties to be developed and thus bring economic revitalization to blighted areas and sites.

#### Latest Update – 13 Enactments

In its first year of active legislative consideration (2005), UECA was adopted in 10 states. So far in 2006, UECA has been adopted in three more jurisdictions (Utah, Idaho, and D.C.) and UECA bills have been introduced in 11 other state and territorial legislatures so far. For the latest information on UECA, please see the newsletter on the UECA website, [www.environmentalcovenants.org](http://www.environmentalcovenants.org).

#### Support for UECA

UECA has been approved by the **American Bar Association**, and UECA is included as “Suggested State Legislation” by the **Council of State Governments**. The legislation is also supported by the **National Institutional Controls Coalition** (NICC), a broad coalition of affected interests, including representatives of affected industries, federal and state regulators, environmental groups, cleanup specialists, and local, state and federal governmental organizations. Current members of the NICC include the following organizations and their members: International City/County Management Association, American Petroleum Institute, Holland and Knight LLP, U.S. Navy, National Governors Association, the National Brownfields Association, the Environmental Bankers Association, the Environmental Law Institute, and Energy Communities Alliance. The NICC maintains a website devoted to UECA at <http://www.lucs.org/ueca>. This website contains information not just on UECA, but the NICC member organizations as well.

A UECA Task Force has been formed, comprised of the commissioners who worked on the drafting committee, as well as a number of the advisors, observers, and environmental law experts who participated in the drafting effort. The task force maintains a website devoted to UECA, [www.environmentalcovenants.org](http://www.environmentalcovenants.org), which contains useful information on the act.